COMPETENCY PROCESS

WITH [EVENT CODES]

Any party might question if someone experiencing certain symptoms of a mental illness are competent to stand trial and file a motion to determine competency.

1 Defendant's Competency is Questioned [MDCST]

use "party picker" to indicate which party filed for evaluation

2 Courts Could Hold a Hearing [HDCST]

to determine if sufficient grounds exist to order an evaluation.

Motion to determine competency is **GRANTED**

Motion to determine competency is **DENIED** [ODMDCST]

Criminal Case Proceeds

3 A Court Orders a Competency Evaluation

While all defendants are presumed competent, courts may order an evaluation if sufficient grounds exist. [OCOEV]

Defendant found **COMPETENT** [OCST]

Court receives expert testimony and other relevant evidence to determine whether the Defendant has the ability to understand the proceeding and assist in the preparation of a defense, unless parties agree to stipulate to the report.

4 Court Receives Necessary Evaluations

Section 35-36-3-1 authorizes courts to appoint a single evaluator for misdemeanor and Level 6 felony cases, reducing the burden of obtaining multiple evaluations. [CEF]

5 Court Sets a Hearing

Upon receiving the necessary evaluation(s), the Court sets a hearing. [ODCST]

6 Court Holds a Hearing [HCH]

Defendant found **NOT COMPETENT**

7 Court finds the Defendant incompetent to stand trial

it must delay or continue the trial and order the Defendant committed to DMHA for restoration services. [OIST]

7a Notify DMHA

Upon order for competency restoration services, the Court Clerk or court staff should send an encrypted email *competency@fssa.in.gov* and send:

1. the Court order finding ICST and committing to DMHA;
2. the Evaluators' reports;
3. the Charging Information;
4. the Probable Cause Affidavit;
5. the Defendant's SSN if available;
6. any No Contact Orders or Guardianship Orders known to the court.

7b Report to NICS

The Clerk or court staff must also report this information to NICS.

Adding the OIST event will transmit the information to NICS. Transmission requires certain data on the party to be completed. Look for the NICSMH or NICSDNS events to confirm that it successfully submitted. See the "NICS Reporting for Mental Health Adjudication" cheatsheet.

7c eNotice to DMHA

Do not add DMHA as a party to the case to send via eNotice.

Send outside of Odyssey. You can go to documents tab, mark documents to be mailed, select Actions and select Email.

Make sure to protect confidential information by sending using a secure/encrypted method.

8 Court Receives Confinement Authority Letter

designating a facility to receive the defendant [DMHACAF]

9 Court is Notified of Competency Restoration Services Availability

This signifies that a bed is available for the defendant to receive competency restoration services. [NCRSA]

10 Court Enters Transport Order

or otherwise notifies defendant that state hospital bed is ready and they should self-report [ARJTRNO]

11 DMHA Communicates to the Court about restoration services **within 90 days from admission:**

11a Defendant has not attained competency [NCNA]

11b Competency Attainable

Defendant has a substantial probability of attaining competency within the foreseeable future and DMHA requests another 90 days, for a total of six months, to restore competency [NSPC]

11c Defendant certified as competent [CCDMHA]

Civil Commitment filed

Additional 90 days

NO

YES

DMHA's Holding Authority is lost if a Civil Commitment is not in place when charges are dismissed, requiring the filing of an emergency detention or immediate release from the hospital. Before charges are dismissed in the criminal case, the appropriate party may inquire with DMHA at Competency@fssa.in.gov whether a civil commitment has been filed. If a Civil Commitment has been secured prior to dismissal, appropriate discharge planning and placement can take place.

If charges are not dismissed, DMHA will file for civil commitment. After a civil commitment is granted, competency restoration services continue. Dual Holding authority is established with the civil court. No further reports will be sent to the criminal court until the defendant is restored to competency.

12 Court Enters Transport Order

Once court receives notice defendant has been restored to competency, court should issue transport order [ARJTRNO]

see Competency Attainment Transport Order in Odyssey

13 Court Should Hold a Hearing

immediately upon return from state hospital and criminal case proceeds.

Note: A forced medication order could be appropriate upon return from the state hospital, but it should only be used under a unique set of circumstances. Judicial officers can contact the Office of Behavioral Health for guidance.